

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

DECISION and ORDER

-vs-

10-CR-6205

MICHAEL WELCH

Defendant.

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BACKGROUND

On October 5, 2010, a multi count indictment was filed against Defendant and others, ECF No.1. The defendant was named in counts one, six, and seven, wherein he was accused of three drug related offenses. On October 18, 2010, the case was referred by text order of the undersigned to Magistrate Judge Marian W. Payson, pursuant to 28 U.S.C. § 636(b)(1)(A)-(B), ECF No. 2. On January 18, 2011, Defendant filed an omnibus motion seeking the following relief, ECF No. 51:

1. MOTION FOR DISCOVERY AND INSPECTION UNDER RULES 12 AND 16 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE.
2. MOTION FOR REQUEST FOR BILL OF PARTICULARS PURSUANT TO RULE 7 (f) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE
3. MOTION FOR DISCLOSURE OF BRADY MATERIAL
4. MOTION FOR DISCLOSURE OF WITNESSES STATEMENTS AND PRODUCTION OF JENCKS ACT MATERIALS
5. DISCLOSURE OF EVIDENCE PURSUANT TO FEDERAL RULES OF EVIDENCE §§ 404 (b), 608 and 609.
6. MOTION FOR PRESERVATION OF ROUGH NOTES AND REQUEST FOR IN-CAMERA REVIEW.
7. MOTION FOR DISCLOSURE OF INFORMANT INFORMATION
8. MOTION FOR SEVERANCE OF DEFENDANTS
9. MOTION FOR SEVERANCE OF COUNTS
10. MOTION TO JOIN IN MOTIONS MADE BY OTHER COUNSEL

11. MOTION TO SUPPRESS STATEMENTS TAKEN IN VIOLATION OF DEFENDANT'S SIXTH AMENDMENT RIGHTS.
12. MOTION FOR AUDIBILITY HEARING.
13. MOTION FOR CONSPIRACY/JAMES HEARING
14. MOTION TO SUPPRESS IDENTIFICATION.
15. IN CAMERA REVIEW OF PRE-SENTENCE REPORT OF GOVERNMENT WITNESSES.
16. MOTION TO SUPPRESS EVIDENCE OF ILLEGAL SEARCH
17. MOTION TO SUPPRESS ARREST AS NO PROBABLE CAUSE
18. MOTION TO SUPPRESS EVIDENCE OF WIRETAP/ ELECTRONIC SURVEILLANCE.
19. MOTION TO RESERVE RIGHT TO BRING FURTHER MOTIONS.

Oral argument was held on Defendant's omnibus motion on February 8, 2011, ECF No. 63. In connection with Defendant's application to suppress evidence obtained as a result of electronic surveillance, Judge Payson filed a Report and Recommendation ("R & R"), December 27, 2011, ECF No. 126, in which she recommended that the application to suppress be denied. On January 9, 2012, Defendant timely sent to the Court, but did not file a document captioned "Objections to Report & Recommendation". In this submission, Defendant states as follows:

The Defendant, Michael Welch, filed Motions for the above-stated relief on January 11, 2011. Defendant has not had an opportunity to argue the hereinstated motions before the Court.

It is respectfully submitted that the Court review and reassess the Report and Recommendation prepared by the Honorable Marian W. Payson as the defendant has not had an opportunity to argue Motions filed herein.

#### DISCUSSION

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the R & R to which objections have been made. At the outset, the Court is unable to discern from the defendant's Objections to Report & Recommendation exactly to what he is objecting to in Judge Payson's R & R. His stated objection, as

detailed above, is that Judge Payson did not entertain oral argument on his omnibus motion. This is not accurate. As reflected on the docket sheet, she did hear oral argument, ECF No. 63. In any event, upon a *de novo* review of the Judge Payson's R & R., including a review of the three eavesdropping warrants signed by Wayne County Court Judge, Honorable John B. Nesbitt , two on March 15, 2010 and one on March 25, 2010, along with the applications and affidavits submitted in support, and after considering the Defendant's objections, the Court accepts the proposed findings and recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Payson's Report and Recommendation, ECF No. 126, the defendant's motion to suppress evidence obtained as a result of electronic surveillance, ECF No. 51, is denied.

IT IS SO ORDERED.

Dated: February 21, 2012  
Rochester, New York

ENTER:

/s/ Charles J. Siragusa  
CHARLES J. SIRAGUSA